

Motion Papers for Crops.

CLERK.

Supreme Court of the United States

OCTOBER TERM, 1895.

OCTOBER TERM, 1895.
Filed Jan. 27, 1896.

No. 864.

THE NEW YORK INDIANS, APPELLANTS,

28.

THE UNITED STATES.

MOTION TO ADVANCE.

Come now the appellants by their attorneys and move the Court to advance the above-entitled cause for hearing at as early a day of the now current term as to the Court may be found convenient, upon the following grounds :

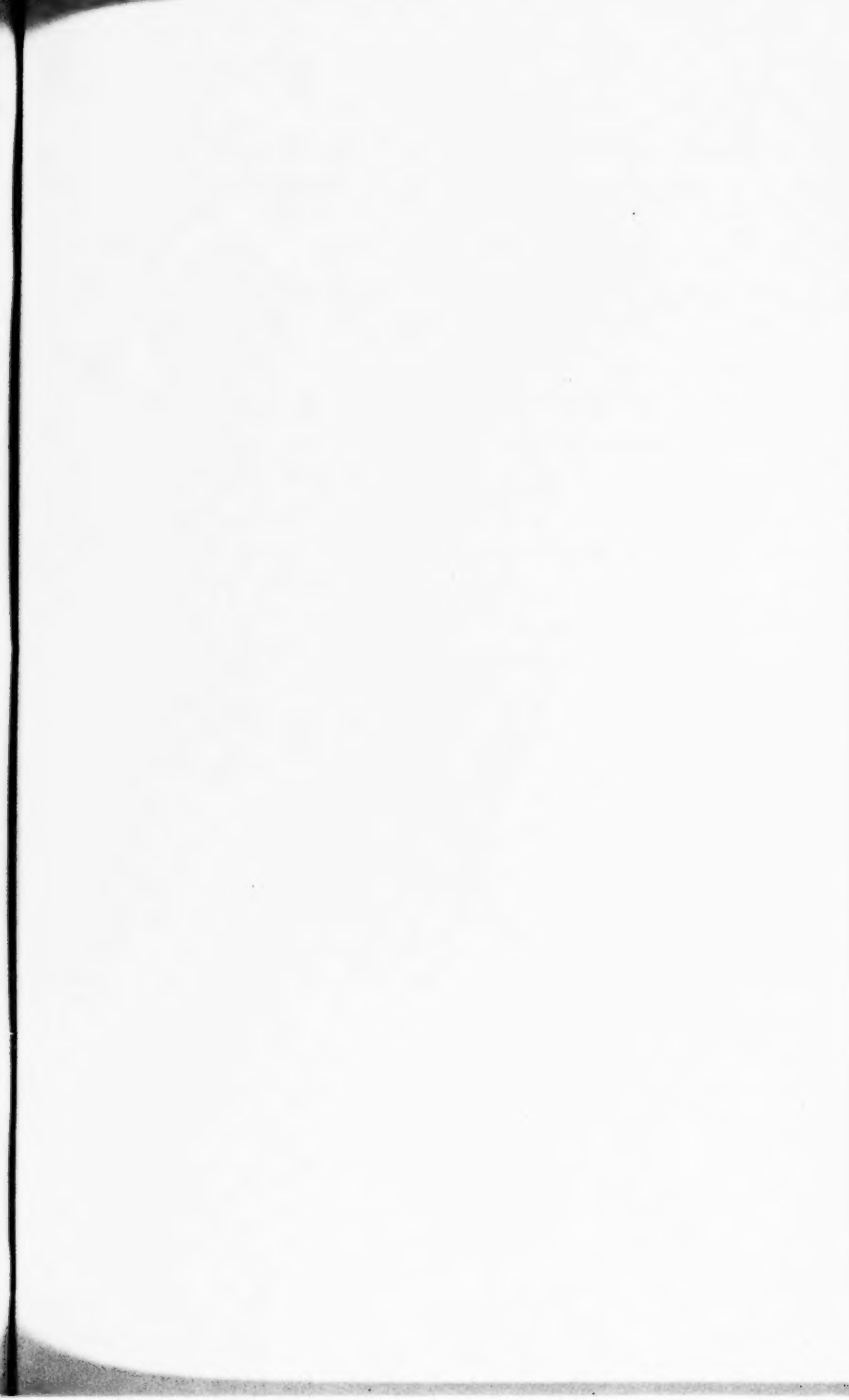
1. The claim upon which the appellants' case is based arose nearly half a century ago, and its adjudication has been delayed without any fault on their part and wholly by the inaction of Government.
2. As the record shows, the case of the appellants has been twice acted upon by the Congress of the United States and

Court of Claims, the first time by reference and consideration under the Bowman act, so called, and the second time by reference and consideration under special act approved January 28, 1893 (27 Stats., 426). The time consumed by these hearings has been of great disadvantage to the appellants and any further delay will be of more serious disadvantage to them.

3. The act authorizing the Court of Claims to hear and determine the claims of the appellants, to wit, the act of January 28, 1893, aforesaid, confers jurisdiction of the cause upon that court, and also upon this Court upon appeal, and it is in terms provided in and by said act as follows: "Said cause shall be advanced on the docket and tried without delay in any court which shall become invested with jurisdiction thereof by the provisions of this act."

Respectfully submitted.

HENRY E. DAVIS,
GUYON MILLER,
Attorneys for Appellants.





N^o. 106.

APR 28 1898
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

Motion to Amend &c.

OCTOBER TERM, 1897.

Filed April 28, 1898.

THE NEW YORK INDIANS, }
 vs. } Appeal from the Court of Claims.
THE UNITED STATES. }

Motion to Amend the Instructions to be Issued to the Court of Claims.

Now come the Appellants by their attorney and move the Court for an order amending the instructions to be issued to the Court of Claims in the above entitled cause, as indicated in the last paragraph of the opinion of the Court, rendered on the 11th day of April, 1898, so that said instructions may be made to read in effect, as follows:

The judgment of the Court of Claims is, therefore, reversed, and the case is remanded with instructions to enter judgment for the Claimants for an amount to be represented by the 1,824,000 acres of land mentioned in the treaty, less the amount of land upon the basis of which settlement was made with the Tonawandas, and less the 10,240 acres allotted the 32 New York Indians, as set forth in finding XII, at the rate of the net price per acre realized by the United States for such of said lands as were sold, without interest, and for such other proceedings as may be necessary and in conformity with this opinion.

GUION MILLER,

Attorney for Appellants.

1901/12

1902/1

1902/2

1902/3

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

NO. 106.

THE NEW YORK INDIANS,

vs

THE UNITED STATES.

} Appeal from the Court of Claims.

Brief in Support of Motion.

This motion is made because of the fear of the Counsel for the Appellants, that if the language used in the last paragraph of the opinion of the Court should be transcribed as a portion of the Mandate, to be issued to the Court of Claims, it might be misconstrued by the Court of Claims to the detriment of the Appellants and contrary to the real purpose of this Court.

This liability to misconstruction arises from the indefinite language found in the second paragraph of finding XV (Record, page 20), in regard to the disposition made by the United States of the Kansas lands. The language referred to is as follows:

"The lands west of the Mississippi, secured to the claimants by the treaty of Buffalo Creek, have been since that treaty surveyed and made a part of the public domain, and sold or otherwise disposed of by the United States, which received the consideration therefor; and the said lands were thereafter and now are included within the territorial limits of the State of Kansas. The price realized by the United States for such of said lands, as were sold, was at the rate of \$1.34 per acre, while the cost of surveying, etc., the same was at the rate of about 12 cents per acre, making the net price realized by the United States about \$1.22 per acre."

This finding does not disclose the fact that a considerable portion of these lands was disposed of by the United States under Military Bounty Land Warrants, selections made by the State of Kansas for internal improvements and school purposes, homestead entries, etc., for which the United States received practically nothing in cash.

"The net amount actually received by the Government for the Kansas lands," if construed to mean the amount actually received in cash, would, therefore, be an amount very much less than the value of these lands as measured by the net price per acre actually received by the Government for such of the lands as were sold.

As this Court has held that the Appellants' title to these lands remained unimpaired at the time they were taken possession of by the United States and opened to settlement, it would seem to be only just that they should receive as compensation such a sum as would fairly represent the actual value of the lands at the time they were taken, without regard to the actual disposition the United States may have seen fit to make of them.

If the Government had given all of these lands away, this would not have destroyed its liability to the Indians. The Court of Claims has, however, found as above set forth, that the United States "received the consideration therefor," and for the purposes of this suit it cannot be material whether there was a monetary or other consideration.

As a measure of value, the net price per acre actually received by the Government for such of the lands as were sold, would seem to be reasonable. That this measure would not be excessive in this case is made manifest by finding of fact XX, (Record page 22), which is as follows:

"There is evidence tending to show that at the time the Kansas lands were opened to settlement they had a value greater than the price received for them by the United States."

GUION MILLER,
GEORGE BARKER,
For the Appellants.

JOSEPH H. CHOATE,
JAMES B. JENKINS,
JONAS H. McGOWAN,
Of Counsel.

